

Appl. No. 09/744,874  
Amdt. dated October 1, 2003  
Reply to Office Action of July 1, 2003

REMARKS

Reconsideration of this application, and the rejection of claims 1-11 are respectfully requested. Applicant has attempted to address every objection and ground for rejection in the Office Action dated July 1, 2003 (Paper No. 11) and believes the application is now in condition for allowance or in better form for appeal. The claims have been amended to more clearly describe the present invention.

The Examiner has reminded Applicant that a claim for foreign priority must be made in this application to obtain the benefit of priority based on priority papers filed in parent Application No. PCT/NZ99/00121. Applicant thanks the Examiner for the courtesies extended to the undersigned during the July 23, 2003 telephone conference, at which the requirement for obtaining the benefit of priority was discussed. Applicant reasserts that there is no requirement for a statement of foreign priority in the National Phase. In any event, the priority claim is properly reflected on the U.S. filing receipt in this application.

Claims 10 and 11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner states that "the nail gun" lacks antecedent basis. In response, "nail gun" has been replaced by "hand tool" as previously described in the preceding claims. Accordingly, the rejection of claims 10 and 11 based on Section 112 is respectfully traversed.

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Claims 1-3, 5 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fox (US 5,598,892). Fox discloses a second hand grip engageable with a bracket attached to the shaft (*See* Col. 4, line 61 to Col. 5, line 5). The second hand grip engages threaded holes in the bracket. As shown in FIG. 1, the bracket has three discrete positions (two shown in phantom) for engagement of the second hand grip, in contrast to infinite degrees of adjustment around the axis. Amended claim 1 recites, among other things, a second hand grip being slidable along the length of the shaft and selectively clampable along the shaft. This amendment is supported in the present application at least at the paragraph beginning on pg. 8, ln. 18 and FIGs. 1 and 4. In view of the failure of Fox to disclose or suggest a second hand grip being slidable along the length of the shaft and selectively clampable along the shaft, the Section 102 rejection of claim 1 is respectfully traversed.

Claims 1 and 4 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Fox. The arguments asserted above traversing the rejection of claim 1 under 35 U.S.C. § 102(b) are reasserted here. Due to the rectangular cross-section of shaft 22, Fox would require substantial modification to allow the bracket 54 and hand grip 52 to be slidably positioned and clamped above the shaft. Furthermore, Applicant asserts that Fox contemplates mounting of the bracket 54 permanently on the shaft 22 and threaded

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engagement of the handle 52 to the bracket holes 56, thus teaching away from allowing adjustment along the length of the shaft. In contrast to the "adjustable handle removably attached" to the structure, the bracket in Fox is simply "attached" suggesting it is permanently affixed to the structure. The handle 52 is adjusted relative to the hand tool only by extension or contraction of the guide rods 32 and adjusting the securement mechanism 44. Nothing in Fox discloses or suggests the claimed slidability and clampability of the handle 52 and bracket 54 along the length of the shaft 22. In contrast, claim 1, as amended, recites, inter alia, the second hand grip being slidable along the length of the shaft and selectively clampable along the shaft. In view of the foregoing remarks, the rejection of claim 1 under Section 103(b) is respectfully traversed.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of a combination of Fox and Swiderski, Jr. et al (US 4,147,220). Claims 10 and 11 ultimately depend from claim 1 and thus include features not present in Fox. The arguments asserted above traversing the rejection of claims 1 and 4 under Section 103(b) are reasserted here. Furthermore, the Swiderski reference fails to supply these deficiencies. Accordingly, claims 10 and 11 are submitted to be allowable, and the rejection based on Fox in view of Swiderski is respectfully traversed.

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Claims 6, 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of a combination of Fox and Causey et al (US 4,207,675). Claims 6, 8 and 9 ultimately depend from claim 1 and thus include features not present in Fox. The arguments asserted above traversing the rejection of claims 1 and 4 under Section 103(b) are reasserted here. Furthermore, the Causey reference fails to supply these deficiencies. Accordingly, claims 6, 8 and 9 are submitted to be allowable, and the rejection based on Fox in view of Causey is respectfully traversed.

None of the above-mentioned references, whether cited or of record and including Spear, Petit, Salcido et al., Fox '851, Moorhead, Sr., Causey et al., Bullock, Elford, Van Troba, Geibel and Steele, taken either alone or in combination, disclose the invention as now claimed. Salcido et al. fail to disclose an angled handle as now recited in claim 1.

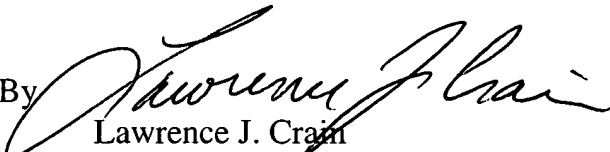
Applicant submits that in view of the above-identified amendments and remarks, the claims in their present form are patentably distinct over the art of record. Also, the newly added claim language is considered to be within the scope of original claim 13, and as such does not have a new issue. Allowance of the rejected claims is respectfully requested. In the alternative, the claims are submitted to be in better form for appeal. Should the Examiner discover there are remaining issues which may be resolved by a telephone

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interview, he is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

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